

STATE OF CONNECTICUT

DEPARTMENT OF HEALTH SERVICES

James Sanders, Embalmer
License No. 2055
23 Murray Street
Waterbury, CT 06710

Petition No. 910606-30-003

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND:

The Department of Health Services ("Department") presented the Connecticut Board of Examiners for Embalmers and Funeral Directors ("Board") with a Statement of Charges brought against James Sanders, Embalmer ("Mr. Sanders" or "Respondent") dated October 9, 1992. (Department Exhibit 2). The Statement of Charges alleged in two counts that the Respondent violated Connecticut General Statutes §20-227, Regulations of Connecticut State Agencies §20-211-34, Regulations of the Federal Trade Commission, 16 C.F.R. Part 453, and/or the minimum standards of practice for embalmers.

Prior to the initiation of the instant charges, the Department offered the Respondent the opportunity to attend a Compliance Conference scheduled on April 24, 1992 to demonstrate compliance with all lawful requirements for the retention of his license. (Department Exhibit 1). Mr. Sanders appeared without counsel at the Compliance Conference held on May 15, 1992. (Transcript 12/7/92 p. 3).

The Notice of Hearing and Statement of Charges was personally served on the Respondent on November 13, 1992. (Department

Exhibit 2). The Respondent filed a response to the Statement of Charges in an Answer dated December 7, 1992. (Respondent Exhibit A).

On December 7, 1992, the Board held an administrative hearing to consider Respondent's case. Both the Department and the Respondent presented evidence and conducted cross-examination of witnesses.

All members of the Board involved in this decision attest that they have either heard the case or read the record in its entirety. The decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

FINDINGS OF FACT:

1. The Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut embalmer license number 2055. (Department Exhibit 2; Respondent Exhibit A).

2. Between 1984 and 1988 Mr. Sanders was the funeral director of Keyes-William Funeral Home, d/b/a Keyes and Sanders Funeral Home, Waterbury, Connecticut ("funeral home"). (Transcript 12/7/92 p. 15).

3. Prior to 1986, Earl Williams was the sole proprietor of the funeral home. After 1986, Mr. Williams held eighty-five percent (85%) of the stock, his wife held ten percent (10%), and his bookkeeper held five percent (5%). (Transcript 12/7/92 pp. 74-75).

4. Three lawsuits arising out of the business relationship between Mr. Sanders and Mr. Williams were litigated in Superior Court. (Department Exhibit 5; Transcript 12/7/92 pp. 63-64). The first concluded that there was no partnership agreement between Mr. Williams and Mr. Sanders. The Superior Court consolidated the two remaining lawsuits. The Court held that, by his actions, Mr. Sanders provided clear and convincing evidence that he knowingly and intentionally diverted funeral home monies for his own use. (Department Exhibit 5). The Court ruled in favor of Mr. Williams and ordered a total judgment against Mr. Sanders of \$909,068.93. (Department Exhibit 5).

5. During the relevant time, Mr. Sanders conducted forty-seven (47) funerals for which he did not write funeral goods and services contracts. (Transcript 12/7/92 pp. 26, 76-77).

6. As of the date of the hearing, Mr. Sanders had not provided Mr. Williams with any of the missing funeral goods and services contracts. (Transcript 12/7/92 pp. 72-73).

7. Mr. Sanders did not report and pay Connecticut sales tax on funerals conducted at the funeral home where there were no goods and services contracts. (Transcript 12/7/92 pp. 26, 220).

8. Mr. Sanders received payments for certain funerals for which he wrote no goods and services contracts. (Transcript 12/7/92 p. 167).

9. Mr. Sanders maintained two personal accounts at the Need Action Federal Credit Union ("NACU"). (Transcript 12/7/92 p. 216).

10. Of the forty-seven (47) funerals for which there were no goods and services contracts, Mr. Sanders embalmed seven (7) people at the Frigon Funeral Home and buried them without reporting these funerals to Mr. Williams. (Transcript 12/7/92 pp. 20, 77, 119).

11. Mr. Sanders collected money for these seven (7) funerals without Mr. Williams's knowledge. (Transcript 12/7/92 p. 20).

12. Of the forty-seven (47) funerals for which there were no goods and services contracts, Mr. Sanders received eighteen (18) reimbursement checks for funerals he conducted for which he never paid any expenses. Mr. Sanders deposited these reimbursement checks into one of his personal NACU accounts. (Transcript 12/7/92 pp. 127-129).

13. Only \$120,248.84 worth of checks or seventy-one percent (71%) of the total amount of \$170,174.37 that was deposited was accounted for. (Department Exhibit 7; Transcript 12/7/92 p. 41).

14. Patricia Johnson wrote a check to Mr. Sanders as payment for the funeral of her father; Mr. Sanders endorsed the check and deposited it into one of his NACU personal accounts. (Department Exhibit 8; Transcript 12/7/92 p. 46).

15. Mr. Sanders conducted the funeral of Henry Simmons without notifying or providing Mr. Williams or his bookkeeper with any information or records. (Transcript 12/7/92 p. 126). The insurance check payable to Carrie Simmons was endorsed by both Ms. Simmons and Mr. Sanders. Mr. Sanders then deposited it into one of his personal NACU accounts. (Department Exhibit 12; Transcript 12/7/92 pp. 126, 137-138).

16. Mr. Sanders repeatedly deposited a portion of checks payable to the funeral home into one of his personal NACU accounts, withdrew the remainder of each check as cash, and gave the cash to Mr. Williams when Mr. Williams indicated he needed money. (Transcript 12/7/92 pp. 225-226).

17. Mr. Sanders stated that he used thousands of dollars from the NACU accounts to make improvements to the funeral home, but

kept no records of the expenditures for tax purposes.
(Transcript 12/7/92 pp. 174, 181).

18. Mr. Williams was not aware of and did not approve any of the funeral home expenditures allegedly made by Mr. Sanders.
(Transcript 12/7/92 pp. 72-73, 185).

19. In the spring of 1988, Mr. Sanders told Mr. Williams that he took and kept the money that had been paid to him for funerals for which no contracts for goods and services were written. (Transcript 12/7/92 pp. 30-31).

20. Mr. Williams terminated Mr. Sanders's employment on or about June 1, 1988. (Transcript 12/7/92 p. 31).

DISCUSSION:

Connecticut General Statutes §20-227 provides in pertinent part:

The department of health services may refuse to grant a license or inspection certificate or the board may take any of the actions set forth in section 19a-17 against a licensee, registrant or holder of an inspection certificate if it finds the existence of any of the following grounds:
... (2) violation of the statutes or regulations of said department relative to the business of embalming or funeral directing in this state; (3) the conviction of a crime in the course of professional activities; (4) incompetency, negligence or misconduct in the carrying on of such business or profession....

The Department brought two counts against Mr. Sanders alleging the following improper conduct:

1. He failed to prepare and/or maintain the "statement of the funeral goods and services" provided in one or more funerals, in violation of (a) Regulations of Connecticut State Agencies §20-211-34, (b) Regulations of the Federal Trade Commission, 16 C.F.R. Part 453, (c) the minimum standards of practice for embalmers, or (d) Connecticut General Statutes §20-227 (Count 1, Par. 3a);
2. He failed to report and/or pay sales tax in one or more funerals, in violation of (a) Regulations of Connecticut State Agencies §20-211-34, (b) Regulations of the Federal Trade Commission, 16 C.F.R. Part 453, (c) the minimum standards of practice for embalmers, or (d) Connecticut General Statutes §20-227 (Count 1, Par. 3b);
3. He diverted funds due the funeral home to a personal account, in violation of Connecticut General Statutes §20-227 (Count 2, Par. 3a);
4. He failed to timely or accurately report to the owner of the funeral home the moneys collected related to

funeral transactions, in violation of Connecticut General Statutes §20-227 (Count 2, Par. 3b); or

5. He misappropriated funds due the owner of the funeral home, in violation of Connecticut General Statutes §20-227 (Count 2, Par. 3c).

A. Failure to Prepare and/or Maintain Statement of Funeral Goods and Services

The Respondent admitted that he did not prepare or maintain the funeral goods and services contracts for certain funerals. State and federal regulations require that a license holder must provide written disclosure of the funeral goods and services selected to each person who arranges a funeral or other disposition of human remains. Regulations of Connecticut State Agencies §20-211-34; Regulations of the Federal Trade Commission, 16 C.F.R. Part 453.2(b)(5). In violating these regulations, the Respondent has also violated the minimum standards of practice for embalmers, and Connecticut General Statutes §20-227. The Department sustained its burden of proof as to Count 1, Paragraphs 3a, 4a, 4b, 4c, and 5.

B. Failure to Report and/or Pay Sales Tax

The word "report" is ambiguous in this portion of the count; the Board interprets this to mean reporting to the State of Connecticut Department of Revenue Services. The owner of the funeral home has the responsibility to report and pay funeral sales tax to the State Department of Revenue Services. As an

employee, the Respondent had no such duty to report and/or pay this tax. The Respondent confirmed that this was not part of his job. The Department did not sustain its burden of proof as to Count 1, Paragraph 3b.

C. Diversion of Funds

The bank checks provide clear documentary proof that the Respondent diverted the funds due the funeral home to his personal account. The Department sustained its burden of proof as to Count 2, Paragraphs 3a, and 4.

D. Failure to Report Moneys Collected

The Department provided extensive evidence that the Respondent withheld information from the owner of the funeral home regarding the money he collected for numerous funeral transactions. The Department sustained its burden of proof as to Count 2, Paragraphs 3b, and 4.

E. Misappropriation of Funds

The Respondent misappropriated funds due the owner of the funeral home. The Respondent testified that he used many of the unreported funds he collected from funeral expenses to make improvements to the funeral home. He had no authority from the owner to make these improvements, nor did he offer any documentary proof of these expenditures. The Department sustained its burden of proof as to Count 2, Paragraphs 3c, and 4.

ORDER:

Pursuant to the authority vested in it by Connecticut General Statutes §19a-17, the Board orders the following in this case against James Sanders, Embalmer, Petition No. 910606-30-003, Embalmer License No. 2055:

1. Mr. Sanders shall be assessed a civil penalty of two hundred and fifty dollars (\$250.00) for each of two (2) counts, for a total penalty of five hundred dollars (\$500.00). The five hundred dollar (\$500.00) penalty shall be paid by certified check, payable to Treasurer, State of Connecticut, sent to the Public Health Hearing Office, State of Connecticut Department of Health Services, 150 Washington Street, Hartford, CT 06106, and due within thirty (30) days of the effective date of this Order. The certified check shall include the Department petition number on its face for identification purposes.
2. Mr. Sanders's embalmer license is hereby suspended for one (1) year, such suspension to be stayed after the initial three (3) month period.
3. The Board places the following conditions on Mr. Sanders's suspension:

- a. Mr. Sanders shall surrender his license to the Board immediately following the effective date of this decision;
 - b. Once Mr. Sanders's suspension is lifted, the Department will return his license if he has complied with all conditions of this decision;
 - c. If Mr. Sanders chooses to keep his current funeral home in operation during his three (3) month suspension, he shall provide the Board with the full name and license number of any individuals providing embalming and/or funeral directing services during the suspension; and
 - d. Mr. Sanders shall provide the Board with copies of all funeral goods and services contracts generated by personnel at his funeral home during his three (3) month suspension.
4. Mr. Sanders will be on probation for nine (9) months following the three (3) month suspension.
 5. The Board places the following conditions on Mr. Sanders's probation:

- a. Mr. Sanders shall comply with all applicable state and federal statutes and regulations for licensed practice as a Connecticut embalmer or funeral director.
- b. During each month of Mr. Sanders's nine (9) month probation, he shall provide the Board with an affidavit that he is complying with all applicable statutes and regulations for licensed practice as a Connecticut embalmer or funeral director;
- c. Each affidavit shall be received within fifteen (15) days of the last day of each month of probation; and
- d. Mr. Sanders's probation will be revoked immediately and his suspension will be summarily reinstated if he fails to comply with any of these conditions.

6. This Order becomes effective upon the signature of the Board chairperson.

CT Board of Examiners for Embalmers
and Funeral Directors

5/26/93
DATE

Morton Weinstein
by: Morton L. Weinstein, Chairperson

7960Q



STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

26 August 1993

James Sanders
23 Murray Street
Waterbury, CT 06710

Re: Petition No. 910606-30-003

Dear Mr. Sanders:

Your eligibility for reinstatement from suspension to probation has been reviewed and your license is being returned to you. This Department's Licensure and Renewal Section will be notified to change your licensure status from suspension to probation effective August 26, 1993.

Renewal of your license is required, by law, annually during the month of your birth following the date of this letter. If your license is not renewed within ninety (90) days of the due date, it will become automatically void. This means future reinstatement will require re-application.

State law requires you to notify this office within (30) days of ANY change in address whether in or out of state. Should you have any questions regarding this process contact this Department at 566-4967.

In accordance with the Memorandum of Decision you are on probation from August 26, 1993 to May 26, 1994 and required to submit a monthly affidavit indicating that you are complying with all applicable statutes and regulations for licensed practice as a Connecticut embalmer or funeral director. Each affidavit must be received within fifteen (15) days of the last day of each month of the probation. The first such affidavit must be forwarded to my attention at the address listed below on or before September 15, 1993:

Department of Public Health and Addiction Services
Public Health Hearing Office
150 Washington Street
Hartford, CT 06105

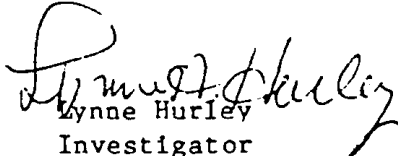
Please be advised that if we do not receive the above required affidavit with the specified time frame, or you fail to comply with any portion of the Memorandum of Decision your license will be suspended for a year.

Phone: 566-4663
150 Washington Street — Hartford, Connecticut 06105
An Equal Opportunity Employer

James Sanders
26 August 1993
Page 2

Thank you for your anticipated cooperation.

Very truly yours,


Lynne Hurley
Investigator
Public Health Hearing Office

LAH:lah
8750/40-41
8/93 -

cc: Donna Buntaine Brewer, Chief, Public Health Hearing Office
John N. Boccaccio, Chief, Licensure and Registration
Joseph J. Gillen, Chief, Applications and Examinations